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700175—46——1

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 137

THIRD NATIONAL BANK IN NASHVILLE, PETITIONER

v.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 142) is reported in 60 F. Supp. 110, and the opinion of the circuit court of appeals (R. 174–179) in 153 F. 2d 678.

JURISDICTION

The judgment of the circuit court of appeals was entered on February 9, 1946 (R. 173), and a petition for rehearing was denied on March 11, 1946 (R. 207). The petition for a writ of certiorari was filed on June 3, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the district courts of the United States have jurisdiction to entertain a suit for damages brought by the Federal Savings and Loan Insurance Corporation, where the amount involved is over $3,000.00 and the Corporation's claim arises out of acts of the defendant which, it is alleged, are violative of Section 512 (e) of the National Housing Act, 48 Stat. 1246, 1255, as amended, 52 Stat. 25, 12 U. S. C. 1731 (e).

STATUTES INVOLVED

The pertinent provisions of the Judicial Code, the Act of February 12, 1925, c. 229, 43 Stat. 941, 28 U. S. C. 42, and of the National Housing Act, are set out in the Appendix, *infra,* pp. 12–15.

STATEMENT

The Federal Savings and Loan Insurance Corporation, a federal instrumentality, filed a complaint in the District Court of the United States for the Middle District of Tennessee which alleged, in substance, that the Insurance Corporation,[1] as directed by Section 403 (a) of the National Housing Act, as amended, Appendix, *infra,* p. 14, insured the accounts of the Association, a federal corporation organized pursuant to Section 5 of the Home Owners' Loan Act of 1933,

[1] The respondent, Federal Savings and Loan Insurance Corporation, will be hereafter referred to as the Insurance Corporation, the petitioner, the Third National Bank in Nashville as the Bank, the Fidelity Federal Building and Loan Association as the Association.

c. 64, 48 Stat. 129, 132, 12 U. S. C. 1464 (a); that, thereafter, one Virgil Hall, the treasurer of the Association, pursuant to a fraudulent arrangement with the Bank in which the Association kept its chief bank account, abstracted the funds of the Association and applied them to his own personal indebtedness to the Bank, depleting the assets of the Association thereby; and that the Insurance Corporation, as required by Section 406 of the National Housing Act, as amended, Appendix, *infra*, p. 14, made a contribution of $32,361.47 to the Association to repair its loss, and took an assignment of all claims of the Association against the Bank. The complaint alleged further that, from time to time, in furtherance of the fraudulent scheme, the Bank falsified the account statements of the Association and participated in other acts of misrepresentation when the Insurance Company's examiners were lawfully engaged in making examinations of the Association's account, in order to deceive the examiners and influence the action of the Insurance Corporation, and that the examiners were deceived, to the damage of the Insurance Corporation. (R. 1–15, 31–53, 74–77).[2]

[2] The Fidelity and Deposit Company of Maryland, which was allowed to intervene in this action (R. 121), joined in the appeal from the order dismissing the complaint of the Insurance Corporation (R. 165) and it is with respect to the judgment in its favor by the court below (R. 174) that a petition for certiorari was filed in No. 138, this Term. No different questions are presented in that case than are present in this and no further reference will be made herein to the intervenor.

The original complaint set out five claims of relief: the first was for conversion of funds of the Association in the amount of $10,000.00 (R. 5); the second for the recovery of $15,945.66, illegally charged against the Association's bank account, which charge had been omitted from the statement shown the examiners (R. 5–6); the third for conversion in the amount of $10,000.00 (R. 6–7); the fourth for damages in the amount of $11,456.83, for fraud and deceit practiced upon the Insurance Corporation's examiners by the Bank (R. 7–12); and the fifth for the proceeds of a mortgage belonging to the Association which was illegally transferred by Hall to the Bank (R. 12–13).

This complaint further stated that the Insurance Corporation would employ the Federal Rules of Civil Procedure to discover the details of certain transactions involving loans made by the Bank to Hall at the time the Association was examined on or about July 12, 1939, and that when this information was obtained it would ask leave to amend its complaint (R. 13–14). Thereafter, the complaint was amended by the filing of a sixth claim of relief—a claim for damages in the amount of $32,056.35, incurred by the Insurance Corporation because of fraud and deceit practiced by the Bank on the Insurance Corporation's examiners at various times from on or about July 12, 1939 up to and through the year 1942 (R. 31–53). In this claim, it was made clear that the Bank

was not liable for more than the amount therein stated (R. 32).[3]

In its original complaint, the Insurance Corporation specified as its ground for invoking the jurisdiction of the federal court that "The plaintiff is a governmental corporation, created by an Act of Congress. Its capital stock is entirely owned by the United States through the Home Owners' Loan Corporation. The status of the plaintiff corporation is the ground upon which this Court's jurisdiction depends" (R. 1–2). Thereafter, when the Bank moved to dismiss the suit for lack of jurisdiction, the Insurance Corporation filed a motion to amend its complaint by setting out the original and two additional grounds upon which the jurisdiction of the Federal Court was based. It asserted (1) that the amount involved was more than $3,000, and that the action arose under the laws of the United States inasmuch as the Government of the United States owned more than one-half of the stock of the Insurance Corporation, (2) that an express grant of jurisdiction to the federal courts over suits of the Insurance Corporation was made by Section 402 (c) (4) of the National Housing Act, Appendix, *infra,* p. 14, and (3) that the amount involved was over $3,000 and that the action arose under the laws of the United States inas-

[3] This amount was originally stated as $34,137.02 (R. 32) but was thereafter reduced to $32,056.35 (R. 76).

much as the Bank's acts, upon which the Insurance Corporation's cause of action was based, violated Section 512 (e) of the National Housing Act, as amended, Appendix, *infra,* p. 15. (R. 136–137.)

The district court stated that it would consider the question of jurisdiction "as if the amendment has been allowed; and if, after such consideration, it appears that there is no jurisdiction irrespective of the proposed amendment, it would be needless to allow same" (R. 152). It thereafter granted the motion to dismiss the case for lack of jurisdiction (R. 162, 163), holding that the "ownership" of all the stock of the Insurance Corporation by the Home Owners' Loan Corporation was not ownership by the United States Government within the contemplation of Section 12 of the Act of February 13, 1925, Appendix, *infra,* p. 12 (R. 151); that the controversy arose under state laws and not under the laws of the United States (R. 153–162); and, by implication, that Section 402 (c) (4) of the National Housing Act, Appendix, *infra,* p. 14, did not make an express grant of jurisdiction to federal courts over suits by the Insurance Corporation. It consequently denied the plaintiff's motion to amend (R. 162). The Insurance Corporation appealed (R. 164), claiming that the federal district court had jurisdiction on all three grounds. The Circuit Court of Appeals for the Sixth Circuit held that the Insurance Corporation's case was "a suit of a

civil nature where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and arises under the laws of the United States," and that therefore, the "plaintiff's contentions in support of grounds 'I' and 'II' * * * are superfluous" (R. 175).

ARGUMENT

1. In its Sixth Claim of Relief (R. 31–52), the Insurance Corporation stated, as a ground for recovery of the entire amount involved in this action (R. 32), that the Bank was guilty of "irregular and illegal transactions * * * and false statements [which] were calculated to and did deceive the plaintiff." (R. 37; see also R. 39, 42, 44–45, 45–47.) Recovery on this theory was expressly premised on Section 512 (e) of the National Housing Act, as amended (R. 137), which provides, shortly, that whoever "for the purpose of influencing in any way the action of the said Corporation under this Act, makes, passes, utters, or publishes * * * any statement, knowing the same to be false * * * shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both." Appendix, *infra,* p. 15. The court below held that the National Housing Act, by virtue of which the Insurance Corporation was created, "clearly and emphatically evidences the National policy to safeguard the Insurance Corporation by Federal

laws to which the Corporation may resort for protection and relief from such fraudulent conduct as that alleged to have been committed by the Bank in this case and the prescribed criminal penalties are not the sole sanctions thereof" (R. 177), and that since this was, therefore, a suit arising under the laws of the United States, it was within the jurisdiction of the federal courts (R. 174–179).[4]

The National Housing Act imposed a duty upon the Bank not to falsify the accounts of the Association or make false statements to the Insurance Corporation's examiners in order to influence the Insurance Corporation's action in respect to Virgil Hall and the Association. The Insurance Corporation therefore had a corresponding right to bring a civil action against the Bank for any damages it incurred because of these false statements. This right arose under and by virtue of the statute itself, and is distinct from any rights the Insurance Corporation may have under common law or by way of assignment from the Association. Cf.

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[4] This being so, the court below found it unnecessary to discuss the other jurisdictional bases asserted (R. 136–137). While the Insurance Corporation waives none of these jurisdictional arguments in this Court, it is not deemed necessary, in this brief in opposition, to reply to petitioner's contention with respect to these grounds (Pet. 4, 7–8, 21–23). Whether the Association assigned its claim to the Insurance Corporation (cf. Pet. 17–18) is a question which is relevant only to the alternative jurisdictional arguments and is, therefore, similarly not discussed in this brief beyond referring the Court to paragraph V of the assignment (R. 86).

Bell v. *Hood*, No. 344, October Term, 1945, slip opinion, pp. 2–3. It is one of the civil sanctions to be derived from the statute. *D'Oench, Duhme & Co.* v. *Federal Deposit Insurance Corp.*, 315 U. S. 447, 461, involved a provision of the Federal Reserve Act substantially identical with Section 512 (e) of the National Housing Act (315 U. S. at 456–457) and this Court said that "Criminal penalties are no more the sole sanctions of the federal policy expressed in this Act than were the criminal penalties imposed on the agreement in the *Deitrick* case." And in *Deitrick* v. *Greaney*, 309 U. S. 190, 200–201 this Court held that "The extent and nature of the legal consequences of [the prohibition in the National Bank Act of the purchase by a bank of its own stock] though left by the statute to judicial determination, are nevertheless to be derived from it and the federal policy which it has adopted." See also *Federal Savings and Loan Insurance Corporation* v. *Kearney Trust Co.*, 151 F. 2d 720, 724–725 (C. C. A. 8); *Board of Commissioners of Jackson County* v. *United States*, 308 U. S. 343; *Sola Electric Company* v. *Jefferson Electric Company*, 317 U. S. 173, 176, 177; cf. *Clearfield Trust Company* v. *United States*, 318 U. S. 363; *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192.

Inasmuch as the Insurance Corporation's right is derived from the federal statute, its suit thereunder is one "arising under the laws of the United States." *Federal Savings and Loan Insurance*

Corp. v. *Kearney Trust Co., supra,* at p. 721. The jurisdictional basis for this suit is analogous to that found in *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen,* 323 U. S. 210. In that case, this Court reversed a decision by the Circuit Court of Appeals for the Fourth Circuit which had held that the plaintiff's right arose solely under the state law. The Court, relying, *inter alia,* on its *Deitrick* decision, stated (323 U. S. at 213):

> We also hold that the right asserted by petitioner which is derived from the duty imposed by the Railway Labor Act on the Brotherhood, as bargaining representative, is a federal right implied from the statute and the policy which it has adopted. It is the federal statute which condemns as unlawful the Brotherhood's conduct * * * The case is therefore one arising under a law regulating commerce of which the federal courts are given jurisdiction * * *.

CONCLUSION

The judgment of the court below is correct and there is no conflict of decisions. The decision below is in harmony with cases already decided by this Court. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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JULY 1946.

APPENDIX

The pertinent provisions of the Judicial Code are as follows:

> SECTION 24 [28 U. S. C. 41]. The district courts shall have original jurisdiction as follows:
>
> First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) Is between citizens of different States, or citizens of the District of Columbia, the Territory of Hawaii, or Alaska, and any State or Territory, or (c) is between citizens of a State and foreign States, citizens, or subjects. * * *

Section 12 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 941, 28 U. S. C. 42, provides as follows:

> That no district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: *Provided,* That this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock.

The National Housing Act of June 27, 1934, c. 847, 48 Stat. 1246, as amended, c. 150, 49 Stat. 293, c. 13, 52 Stat. 8, 12 U. S. C. 1701 *et seq.*, provides, in pertinent part, as follows:

> Sec. 402 [12 U. S. C. 1725] (a) There is hereby created a Federal Savings and Loan Insurance Corporation (hereinafter referred to as the "Corporation"), which shall insure the accounts of institutions eligible for insurance as hereinafter provided, and shall be under the direction of a board of trustees to be composed of five members and operated by it under such bylaws, rules, and regulations as it may prescribe for carrying out the purposes of this title. The members of the Federal Home Loan Bank Board shall constitute the board of trustees of the Corporation and shall serve as such without additional compensation. The principal office of the Corporation shall be in the District of Columbia.
>
> (b) The Corporation shall have a capital stock of $100,000,000, which shall be divided into shares of $100 each. The total amount of such capital stock shall be subscribed for by the Home Owners' Loan Corporation which is hereby authorized and directed to subscribe for such stock and make payment therefor in bonds of the Home Owners' Loan Corporation. The Corporation shall issue to the Home Owners' Loan Corporation receipts for payment for or on account of such stock, which shall serve as evidence of the ownership thereof, and the Home Owners' Loan Corporation shall be entitled to the payment of dividends on such stock out of net earnings at a rate equal to the interest rate on such bonds, which dividends shall be cumulative.

(c) Upon the date of enactment of this Act, the Corporation shall become a body corporate, and shall be an instrumentality of the United States, and as such shall have power—

(1) To adopt and use a corporate seal.

(2) To have succession until dissolved by Act of Congress.

(3) To make contracts.

(4) To sue and be sued, complain and defend, in any court of law or equity, State or Federal.

* * * * *

Sec. 403 [12 U. S. C. 1726] (a) It shall be the duty of the Corporation to insure the accounts of all Federal savings and loan associations, and it may insure the accounts of building and loan, savings and loan, and homestead associations and cooperative banks organized and operated according to the laws of the State, District, or Territory in which they are chartered or organized.

Sec. 406 [12 U. S. C. 1729]

* * * * *

(f) In order to prevent a default in an insured institution or in order to restore an insured institution in default to normal operation as an insured institution, the Corporation is authorized, in its discretion, to make loans to, purchase the assets of, or make a contribution to, an insured institution or an insured institution in default; but no contribution shall be made to any such institution in an amount in excess of that which the Corporation finds to be reasonably necessary to save the expense of liquidating such institution.

Sec. 512 [12 U. S. C. 1731]

* * * * *

(e) Whoever, for the purpose of inducing the insurance of the accounts of any institution by the Federal Savings and Loan Insurance Corporation or for the purpose of obtaining any extension or renewal of such insurance by said Corporation or for the purpose of influencing in any way the action of the said Corporation under this Act, makes, passes, utters, or publishes, or causes to be made, passed, uttered, or published, any statement, knowing the same to be false, or utters, forges, or counterfeits, or causes or procures to be uttered, forged, or counterfeited, any instrument, paper, or document, or utters, publishes, or passes as true, or causes to be uttered, published, or passed as true, any instrument, paper, or document, knowing it to have been uttered, forged, or counterfeited, or willfully overvalues any security, asset, or income, of any institution insured or applying for insurance by said Corporation, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both.

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